

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CRIMINAL NO. 16-20460

Plaintiff,

HON. MARK A. GOLDSMITH

v.

D-5 PATRICK JOHNSON,

Defendant.

---

**GOVERNMENT’S RESPONSE TO MOTION TO PRECLUDE THE  
GOVERNMENT’S USE OF RAP LYRICS AND RAP VIDEOS AT TRIAL**  
**[367]**

The United States of America, by and through undersigned counsel, respectfully requests that the Court deny the Defendants’ Motion to Preclude the Government’s Use of Rap Lyrics and Rap Videos at Trial (ECF 367)<sup>1</sup> for the reasons stated below.

**I. INTRODUCTION**

Defendants ask the Court to preclude the government’s use of nine rap songs, lyrics, and videos at trial pursuant to the Defendants’ First Amendment Right to Free Speech and Free Association. As further detailed below, the contested evidence is

---

<sup>1</sup> This motion has been joined by the following defendants: D-1 Edwin Mills (ECF 432); D-2 Carlo Wilson (ECF 437); D-3 Donell Thompson (ECF 483); and D-4 Lomnil Jackson (ECF 481).

relevant, admissible, and possesses probative value that is not substantially outweighed by the danger of unfair prejudice.

**a. Procedural History**

On February 28, 2018, a grand jury in the Eastern District of Michigan indicted the Defendants, on a Second Superseding Indictment (ECF 292 (hereinafter the “Indictment”)), alleging various crimes in connection with their membership and association with the 6 Mile Chedda Grove enterprise (“6 Mile enterprise”).

Count One alleges that the Defendants, and known and unknown co-conspirators, conspired to conduct and participate in the affairs of the 6 Mile enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(d). Count One further alleges that the pattern of racketeering activity consisted of threats and acts involving murder and robbery under state of Michigan law, offenses involving dealing in controlled substances under federal law, and acts indictable under federal law (ECF 292, p. 9-10). The Defendants and co-conspirators documented through rap videos, songs, and lyrics these racketeering activities and their association with each other and the 6 Mile enterprise, and promoted and furthered the goals of the 6 Mile enterprise through these videos, songs, and lyrics.

On May 24, 2018, Defendant Patrick Johnson filed the instant motion (ECF 367), which was joined by other defendants. The Defendants allege that “[h]owever distasteful, these are artistic expressions entitled to Constitutional protection. Further they are expressions of political and social commentary, sitting on the highest rung of First Amendment hierarchy” (ECF 367, p. 7). Defendants’ Motion addresses nine specific rap songs, lyrics, and videos, which the government intends to play into evidence:

- (1) 42 Twin featuring Team Eastside Peezy;
- (2) Team Eastside Peezy – “In These Streets”;
- (3) Team Eastside Peezy – “Looking Crazy”;
- (4) Team Eastside Peezy – “Real Niggas Win”;
- (5) Team Eastside Peezy – “Trenches”;
- (6) Team Eastside Peezy – “Out The Hood”;
- (7) Team Eastside Peezy – “The Intro”;
- (8) Team Eastside Peezy – “Young Nigga World”; and
- (9) Team Eastside Peezy – “B4 Rap.”

#### **b. Factual Background**

As alleged in the Indictment, the Defendants, along with numerous other individuals, are members of the 6 Mile enterprise.

The 6 Mile enterprise operates primarily on the east side of Detroit within the area bordered roughly by East McNichols Road to the north, Kelly Road to the east, Houston-Whittier Street to the south, and Chalmers Street to the west. 6 Mile

members and associates claim this area as their territory and mark it with the gang's graffiti. One of the main streets in that territory where 6 Mile conducts illegal narcotics distribution is Cedargrove Street, from which 6 Mile members and associates derive the words "Chedda Grove" as part of the gang's name. 6 Mile members and associates also use the term "chedda" to refer to the lucrative monetary profits they generate through illegal narcotics distribution in that area. 6 Mile members and associates would congregate at particular locations such as members' houses, vacant houses, and the Hayes Troester Super Market.

6 Mile members and associates engage in criminal activities such as murders, attempted murders, robberies, attempted robberies, and the distribution of illegal narcotics. 6 Mile members and associates will conduct criminal activities with non-members of the gang who are "cool" with 6 Mile.

The relationships between 6 Mile members and associates vary with some being siblings or cousins, some who became friends with each other during their childhood upbringing and living in certain neighborhoods, or some who attended school together, including at Detroit's Denby High School.

When 6 Mile members and associates signify their affiliation with the gang, it is often referred to as "claiming" or "repping" 6 Mile. 6 Mile members or associates "claim" or "rep" in various ways including, but not limited to: tattoos

including dice, bricks (a reference to sizeable quantities of heroin), the acronym “B.R.O.S.” (an acronym for “Better Respect or Suffer”), and the street signs of the intersection of Cedargrove Street and Hayes Street; distinctive hand signs including forming the numeral “6” or the letter “E” (a reference to the gang’s territory on the east side of Detroit), and holding and pointing imaginary handguns (a reference to the gang’s willingness to use firearms and be “shooters”); and clothing such as t-shirts and hats that display phrases including “6 Mile” and “Chedda Grove” or seeking the release from prison of other 6 Mile members. 6 Mile members and associates also express respect or homage to deceased 6 Mile members and associates in their graffiti, social media postings, and clothing.

6 Mile members and associates utilize internet social networking and media websites including Facebook, YouTube, and Instagram in the following ways: operating accounts with user names that begin with “SixMile” or “Chedda Grove”; posting “#OCB,” “#bros,” “#boyz,” and “#cheddaGroveboyz”; and sharing photographs and videos of each other, including rap videos. 6 Mile members and associates often brandish firearms in photographs and videos to intimidate rivals and the community, and showcase the gang’s power and willingness to discharge firearms. These videos detail and boast about the 6 Mile enterprise’s criminal activities.

6 Mile earns money predominantly through the sale and distribution of controlled substances including, but not limited to: cocaine base or “crack cocaine” which they often refer to as “girl”; heroin which they often refer to as “boy” or “dogfood”; oxycodone and morphine pills which they often refer to as “beans”; marijuana which they often refer to as “reggos” and “kush” depending on its quality; and codeine promethazine combined with soda in a liquid they often refer to as “lean.” 6 Mile members and associates sell and distribute controlled substances in Michigan, and other states including Ohio, Kentucky, Tennessee, Alabama, and West Virginia. When a 6 Mile member or associate establishes a successful narcotics distribution territory outside of Michigan, that territory is known as a “lane” for which that person is now chiefly responsible.

6 Mile clashes with rival gangs including the Seven Mile Bloods, commonly known on Detroit’s east side as “SMB,” and the Knock Out Boys. 6 Mile has formed alliances at various times with other street gangs including, “Hustle Boys,” “Chedda Ave,” and “Gutta Hogg.”

## **II. ARGUMENT**

### **a. Rap Lyrics are not entitled to heightened protection under the First Amendment.**

The Defendants contend that the 6 Mile rap songs are expressive conduct and artistic expression which constitute political and social discourse, and thus that the

admission of the tracks would violate their right to freedom of expression. They further contend that because the 6 Mile rap songs constitute protected speech the Court must evaluate their admission at trial using a heightened constitutional analysis, rather than a standard evidentiary analysis. This analysis is incorrect.

The First Amendment guarantees that “Congress shall make no law . . . abridging the freedom of speech . . . .” U.S. CONST. amend. I. First Amendment protection extends to music “as a form of expression and communication.” *Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989). The Supreme Court has made clear; however, that “[t]he First Amendment . . . does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent.” *Wisconsin v. Mitchell*, 508 U.S. 476, 489 (1993). The First Amendment simply bars the admission of evidence relating to a defendant’s “abstract beliefs . . . when those beliefs have no bearing on the issue being tried.” *Dawson v. Delaware*, 503 U.S. 159, 165, 168 (1992). “The crucial question is whether the evidence at issue [is] used for permissible purposes or merely to show that [the defendant] was morally reprehensible due to his abstract beliefs.” *United States v. Fell*, 531 F.3d 197, 229 (2d Cir. 2008) (internal quotations omitted) (quoting *United States v. Kane*, 452 F.3d 140 (2d Cir. 2006)); *see also Dawson*, 503 U.S. at 165 (“[T]he Constitution does not erect a per se barrier to the admission of evidence concerning one’s beliefs and

associations...simply because those beliefs and associations are protected by the First Amendment.”).

As part of its proofs at trial, the government will have to prove that the 6 Mile enterprise, as charged in the Indictment, exists, that the Defendants are members or associates of that charged enterprise, and that the Defendants committed certain acts related to and in furtherance of the 6 Mile enterprise. Among the pieces of evidence the government intends to introduce at trial are the 6 Mile rap songs.<sup>2</sup>

There are several reasons these 6 Mile rap songs are important to proving the government’s case. First, they make a fact of consequence, the existence of the 6 Mile enterprise, more probable than it would be without the evidence. *See* Fed. R. Evid. 401. In these 6 Mile rap songs, many of the Defendants are depicted with each other, at known locations important to the 6 Mile enterprise, while brandishing firearms, displaying gang hand signs, and wearing gang clothing. Second, the tracks clearly demonstrate the relationship between the Defendants, the 6 Mile enterprise, and other enterprise associates. Third, the 6 Mile rap songs provide a visual representation of the clothing, symbols, tattoos, hand signs, and territory of the 6

---

<sup>2</sup> The government will file an ex parte motion for leave to file exhibits in the traditional manner so the Court may view the nine rap songs. Additionally, brief highlights of the 6 Mile rap songs are also attached as Exhibit 1. These highlights are meant to be concise and give the Court a general idea as to their relevance. The highlights do not contain all of the reasons the particular songs are relevant.



Mile enterprise. Finally, the tracks discuss and promote the goals and purposes of the 6 Mile enterprise, which is to earn money through narcotics trafficking and violence, and the means the 6 Mile enterprise uses to accomplish its goals, including violence and threat of violence against rivals.

In a recent similar RICO gang case in this district in which a defendant had been indicted for participating in a RICO conspiracy as a member of the Bounty Hunter Bloods, the district court denied a First Amendment argument to exclude rap lyrics as meritless. *United States v. Garnes*, No. 14-20119, 2015 WL 3574845, at \*2, n.1 (E.D. Mich. June 5, 2015) (J. Edmunds). In that case, the court rejected the First Amendment argument and the applicability of *Dawson v. Delaware*, 503 U.S. 159 (1992), on which the Defendants in this case also rely. *Id.* at \*2, n. 1. The court explained that “[u]nlike in *Dawson*, Defendant’s lyrics will be relevant to the issues being decided in the proceeding (i.e., his membership in the Bounty Hunters gang.) If they are not relevant, then they will be excluded regardless under the Federal Rules of Evidence.” *Id.* (internal quotations omitted). The court also cited to and quoted the Second Circuit in *U.S. v. Pierce*, No. 13-3687, 2015 WL 2166141, at \* 6 (2nd Cir. May 11, 2015), as persuasive authority, which also addressed whether admission of rap lyrics in a gang trial violated the First Amendment: “[t]his challenge is meritless, however, because here the speech is not itself the proscribed conduct. The speech was not the basis for the prosecution, but instead it was used

to establish the existence of, and Colon's participation in, the alleged RICO enterprise." *Id.*

Simply put, the First Amendment does not erect a constitutional bar to the admission of the 6 Mile songs in this case. The 6 Mile rap songs are not being offered by the government to depict the Defendants as "morally reprehensible" because of their "abstract beliefs" as expressed through the content of their videos. *See Fell*, 531 F.3d at 229. Rather, the 6 Mile rap songs directly relate to the Defendants' charged conduct. *See Dawson*, 503 U.S. at 168. The government seeks to offer the 6 Mile rap songs as direct, highly probative evidence of the existence of the racketeering enterprise, the Defendants' history with that enterprise, its members, and associates, the relationship of trust between its members, the unlawful possession and use of firearms, the use and threatened use of violence against its rivals, and the fact that the Defendants committed specific crimes to further the goals of the enterprise. Consequently, the First Amendment does not present a bar to the introduction of the 6 Mile rap songs in this case. *See United States v. Salameh*, 152 F.3d 88, 111-12 (2d Cir. 1998) (rejecting arguments that the First Amendment bars admission of evidence of a defendant's political speech when the materials were used to prove motive and intent and "provided circumstantial proof of a connection among the conspirators"); *id.* ("Where a defendant is a member of a conspiracy, all the evidence admitted to prove that conspiracy, even evidence relating to acts

committed by co-defendants, is admissible against the defendant”); *United States v. Herron*, No. 10-615, 2014 WL 1871909, at \*2-3 (E.D.N.Y. May 8, 2014) (rejecting defendant’s argument on First Amendment grounds for preclusion of rap-related videos in a racketeering case in which the enterprise involved murders, drug distribution conspiracy, and firearms offenses).

Contrary to the Defendants’ assertions, the 6 Mile rap songs are not abstract; but rather discuss actual, specific activities of the 6 Mile enterprise. For example, in the song “B4 Rap,” published on YouTube on October 26, 2015, co-defendant Peaks raps about co-defendant Edwin Mills assisting with narcotics distribution (ECF 292, p. 18). In that same video, co-defendants Edwin Mills, Carlo Wilson, Lomnil Jackson, Corey Mills, and Michael Richardson are depicted brandishing firearms and displaying gang hand signs while inside the Troester Market (ECF 292, p. 18). Moreover, co-defendant Peaks throughout the song raps also about “running with the killers,” “selling hella dope,” and “been on Chedda Grove,” all of which are references to racketeering activities of the 6 Mile enterprise and its name.

Likewise in the song “Young Nigga World,” published on YouTube on March 30, 2015, co-defendant Peaks raps “if you touch one of mine, then you got to pay,” and “thousand pill stash in the secret compartment,” both of which are references to racketeering activities of the 6 Mile enterprise (ECF 292, p. 16). In that same video, co-defendants Edwin Mills, Carlo Wilson, Donell Thompson, Lomnil Jackson, and

Phillip Peaks are depicted together at the Troester Market and in front of co-defendant Edwin Mills's home while brandishing firearms, displaying gang hand signs, and wearing gang clothing. Notably, co-defendants Edwin Mills and Carlo Wilson are alleged to have shot and killed victims A.T. and S.H. at the Troester Market on December 1, 2015 (ECF 292, p. 18).

The Defendants generally surmise that the 6 Mile rap songs are political speech. They argue that the 6 Mile rap songs are subject to even greater protections and their introduction into evidence would violate the Defendants' rights of free expression under the First Amendment. This argument finds no support in the law as applied to the particular facts of this case. The Defendants built a criminal enterprise through violence, the distribution of narcotics, and intimidation in part by publishing these 6 Mile rap songs on the Internet for the public to see. That the Defendants put their admissions to music, or made them rhyme, or presented them in documentary-style videos does not inoculate them against their use at trial.

The cases cited by the Defendants provide no support for their position. *Snyder v. Phelps*, 562 U.S. 443 (2011), supports the basic proposition that speech on public issues lies at the heart of the First Amendment's protection, but the case provides no guidance on the evidentiary issue before this Court. *Phelps* addressed a civil lawsuit seeking to hold the members of the Westboro Baptist Church liable for the content of—and harm allegedly caused by—speech concerning “the fate of our

nation, homosexuality in the military, and scandals involving the Catholic clergy....” *Id.* at 444. Here, the government is not seeking to punish or otherwise hold the Defendants liable for the content of the speech; rather, the speech is being introduced as evidence of their criminal conduct.

As explained above, the Defendants also rely on *Dawson v. Delaware*, 503 U.S. 159 (1992), but that case *supports* the admission of the 6 Mile rap songs. *Dawson* found constitutional error in the admission of evidence at sentencing concerning the defendant’s membership in a Delaware branch of the Aryan Brotherhood on the grounds that the government failed to demonstrate that the Delaware branch held any racist beliefs, and that, in any event, there was no evidence that the crime was animated by racial animus. *Id.* at 160, 166. The Supreme Court observed, that “on the present record one is left with the feeling that the Aryan Brotherhood evidence was employed simply because the jury would find these beliefs morally reprehensible.” *Id.* at 167. In so holding, however, the Supreme Court rejected the notion that the Constitution forbids consideration at sentencing of “any evidence concerning beliefs or activities that are protected under the First Amendment.” *Id.* at 164. *Dawson* therefore confirms that the First Amendment does not preclude the use of public speech, or the fact of a defendant’s association with a criminal enterprise, as evidence in a criminal proceeding. The question then

becomes whether the 6 Mile rap songs are admissible under the Federal Rules of Evidence.

**b. The 6 Mile rap songs are admissible under the Federal Rules of Evidence.**

**i. The 6 Mile rap songs are Admissible under Rule 801(d)(2)**

The 6 Mile rap songs contain statements and depict conduct of the Defendants and their co-conspirators which are admissible as admissions of a party opponent pursuant to Fed. R. Evid. 801(d)(2)(A), admissible as statements the party manifested that it adopted or believed to be true pursuant to Fed. R. Evid. 801(d)(2)(B), and admissible as statements made by a co-conspirator during and in furtherance of the conspiracy pursuant to Fed. R. Evid. 801(d)(2)(E).

The 6 Mile rap songs depicted several 6 Mile enterprise members and associates, including all six of the remaining co-defendants in this case. Co-defendant Phillip Peaks raps the lyrics himself in all of the 6 Mile songs, and others participate in the 6 Mile songs by wearing gang clothing, making gang signs, throwing money, and singing along to the lyrics in the videos, showing their adoption and belief in the statements. Therefore, the 6 Mile songs are admissible under Fed. R. Evid. 801(d)(2)(A) and (B).

In the alternative, the 6 Mile rap songs are admissible as co-conspirator statements made in the course of, and in furtherance of, the racketeering conspiracy.

The 6 Mile rap songs were were uploaded to YouTube during the timeframe of the conspiracy alleged in the Indictment, 2008 to November 30, 2016. *See United States v. Norwood*, No. 12-20287, 2015 WL 2250481, at \*5-8 (E.D. Mich. May 13, 2015) (J. Goldsmith) (“Norwood I”) (finding rap videos were made in the course of RICO conspiracy where evidence showed defendant viewed himself as active member of the group while the videos were made). The 6 Mile rap songs also were made in furtherance of the conspiracy.

The 6 Mile enterprise’s purposes are to maximize profits from illegal activity, preserve and protect the power, territory and profits of the enterprise through intimidation and violence, promote and enhance the enterprise and its members, and keep victims in fear of the enterprise through violence and threats of violence (ECF 292, p. 6-7). The 6 Mile rap songs portray these purposes and the means the enterprise uses to accomplish it, including committing murder, robbery, assaults with firearms, witness intimidation, and drug trafficking. (ECF 292, p. 6-8). Therefore, the 6 Mile rap songs also are admissible under 801(d)(2)(E). *See Norwood I*, 2015 WL 2250481, at \* 10-11 (finding rap videos posted online which threatened snitches were admissible where the government showed that, as alleged in its indictment, the purpose of the conspiracy was to protect the enterprise from detection, apprehension, and prosecution); *U.S. v. Norwood*, No. 12-20287, 2015 WL 2343970, at \* 11 (E.D. Mich. May 14, 2015) (J. Goldsmith) (“Norwood II”)

(finding that rap lyrics that “helped establish the existence of the enterprise, its members, and at least one of its alleged purposes and/or means and methods” were admissible as co-conspirator statements made in furtherance of a conspiracy pursuant to Rule 801(d)(2)(E)) (citing *United States v. Wilson*, 493 F.Supp.2d 460, 462-63 (E.D.N.Y. 2006)).

**c. The 6 Mile rap songs are admissible under Rule 403.**

The Defendants argue that the 6 Mile rap songs should nevertheless be excluded under Fed. R. Evid. 403 because the danger of unfair prejudice substantially outweighs the probative value of the evidence. Contrary to the Defendants’ assertions, the songs are highly probative evidence of the charged conduct.

Relevant evidence may be excluded, “if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” *See* Fed. R. Evid. 403. “Unfair prejudice ‘does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.” *United State v. Gibbs*, 182 F.3d 408, 430 (6th Cir. 1999) (quoting *United States v. Bonds*, 12 F.3d 540, 567 (6th Cir. 1993)).



The Sixth Circuit has found that “[a]lthough prejudicial to a defendant, evidence of gang affiliation can be sufficiently probative to survive a Rule 403 challenged.” *United States v. Williams*, 158 Fed. Appx. 651, 653-54 (6th Cir. 2005) (finding no abuse of discretion where district court introduced evidence of gang affiliation to show participation in a drug conspiracy). “This Court has held that evidence of gang affiliation is admissible to establish the defendant’s opportunity to commit a crime, [*United States v. Jobson*, 102 F.3d 214, 221 (6th Cir. 1996)], or where the interrelationship between people is a central issue in the case, *United States v. Gibbs*, 182 F.3d 408, 430 (6th Cir. 1999), *United States v. Tolbert*, 8 Fed. Appx. 372, 378–79 (6th Cir. 2001), but is inadmissible if there is no connection between the gang evidence and the charged offense, *United States v. Hendrix*, No. 94–1404, 1995 WL 218472, at \*3 (6th Cir. Apr. 12, 1995).” *United States v. Anderson*, 333 Fed.Appx. 17, 24 (6th Cir. 2009) (internal quotations omitted); cf. *United States v. Newsom*, 452 F.3d 593, 604 (6th Cir. 2006) (holding the danger of unfair prejudice substantially outweighed the probative value of gang tattoo evidence where the charge was felon in possession of a firearm).

The Sixth Circuit has held rap lyrics about killing witnesses admissible over Federal Rule of Evidence 401, 402, 403, and 404(b) objections. See *United States v. Stuckey*, 253 Fed. Appx. 468, 482–84 (6th Cir. 2007). In *Stuckey*, the lyrics described specific facts matching the charged crime. *Id.* at 482–83. “Stuckey’s

lyrics concerned killing government witnesses and specifically referred to shooting snitches, wrapping them in blankets, and dumping their bodies in the street—precisely what the government accused Stuckey of doing to Darbins in this case.” *Id.* at 482. While Stuckey argued that “the lyrics were fictional, and that their admission unfairly prejudiced him because of their use of ‘extreme words and imagery’ and ‘graphic’ language,” the Court explained that the evidence was admitted as “autobiographical statements of acts relevant to the case” to prove that he killed the victim and not to show his propensity toward violence. *Id.* at 483.

Likewise, as addressed above, the district court in *Norwood II* held that rap videos posted online were admissible in a RICO case because they “helped establish the existence of the enterprise, its members and at least one of its alleged purposes and/or means and methods: evading law enforcement by using threats and violence to dissuade witnesses from ‘snitching.’” *Id.*, at \*11 (citing *Wilson*, 493 F.Supp.2d at 462–63 ( permitting rap lyrics to be used to show the existence of a racketeering enterprise as co-conspirator statements made during the course of, and in furtherance of, a conspiracy under Rule 801(d)(2)(E)).

The 6 Mile rap songs are highly probative, on-topic, and important evidence tending to establish that the Defendants and co-conspirators belonged to the charged 6 Mile enterprise and engaged in conduct to further its purpose and goals. The 6 Mile rap songs directly address the Defendants’ involvement, knowledge, and intent

by appearing together and discussing distributing narcotics, killing rivals, depicting and protecting their claimed territory, and working together as members and associates of and in furtherance of the 6 Mile enterprise. *See Herron*, 2014 WL 1871909, at \*4 (finding the content of the rap-related videos to be relevant in a similar case where the government must prove the existence and structure of an alleged criminal enterprise and a pattern of criminal activity committed in furtherance of that enterprise).

The cases on which the Defendants rely are not persuasive in this case, primarily because they concern situations where a defendant is charged with a discreet crime (i.e. felon in possession of a firearm or attempted murder) and the government introduces evidence this is not relevant to the charged crime. For example, in *U.S. v. Bey*, No. 16-290, 2017 WL 1547006, at \*4 (E.D. Pa. Apr. 28, 2017), the court found the rap music evidence inadmissible under Rule 404(b) because knowledge, absence of mistake, and intent were not at issue in that felon in possession of a firearm case. In addition, the court found the probative value of the contested evidence was undercut because the evidence was undated, so it was not known if the rap music was created at or near the time of the defendant's arrest, and the government did not demonstrate that the rap music was autobiographical. *Id.* at \*6-7. "The government has not demonstrated, for example, that Bey actually carries pistols while in Porsches, has been shot in his chest and experienced burning "like

vodka,” has shot Jewish people, or kills “at will.” *Id.* The Court went on to explain that “many of the lyrics contain potentially inflammatory material that is entirely irrelevant to this case, such as references to the Black Mafia, Louis Farrakhan, John Dillinger, and statements about ‘bruise[ing] on’ Jewish people and ‘blast[ing] you in your yarmulke.’ These statements risk inflaming the jurors and have no bearing whatsoever as to whether Bey possessed a firearm on March 28, 2016.” *Id.* at \*7.

Similarly, the other case the Defendants cite to *State v. Skinner*, 218 N.J. 496, 500, 95 A.3d 236, 238–39 (2014), a prosecution for attempted murder. In that case, the New Jersey State Supreme Court affirmed the lower court holding that,

“the violent, profane, and disturbing rap lyrics authored by defendant constituted highly prejudicial evidence against him that bore little or no probative value as to any motive or intent behind the attempted murder offense with which he was charged.... Fictional forms of inflammatory self-expression, such as poems, musical compositions, and other like writings about bad acts, wrongful acts, or crimes, are not properly evidential *unless* the writing reveals a strong nexus between the specific details of the artistic composition and the circumstances of the underlying offense for which a person is charged, and the probative value of that evidence outweighs its apparent prejudicial impact.” *Skinner*, 95 A.3d at 238-39 (emphasis added);

However, that case is easily distinguishable, and in fact, has already been distinguished by another district court in this district when the charge is RICO conspiracy. *Norwood II*, 2015 WL 2343970, at \* 10-11 (“In that non-binding, state-court case, the New Jersey Supreme Court interpreted New Jersey Rule of Evidence 404(b) with respect to the admission of rap lyrics at trial..... The *Skinner* court

specifically noted that ‘rap lyric evidence that provides direct proof against a defendant—such as an admission or details that are not generally known and dovetail with the facts of the case—should be analyzed for relevance under [Rule] 401 and evaluated under [Rule 403]’s standard for prejudice, and not the standard for prejudice under a [Rule 404(b)] analysis.’.... That is the case here, and thus Skinner is distinguishable”).

In sum, the 6 Mile rap songs have a strong nexus to the underlying offenses and the 6 Mile enterprise that the government has to prove, and is particularly relevant to proving the Defendants’ association with the enterprise. As addressed above, many of the statements within the 6 Mile rap songs directly relate to actual racketeering activities of the 6 Mile enterprise. “While it is true that the videos contain profanity, misogyny, and references to violence that viewers could find objectionable or shocking, it cannot be said that their content is ‘more inflammatory’ than the charged crimes—[ ] violent murders, narcotics trafficking, weapons possession, and other criminal activity by the alleged enterprise.” *Herron*, 2014 WL 1871909, at \*5 (quoting *United States v. Livoti*, 196 F. 3d 322, 326 (2d Cir. 1999)). The government will be judicious in paring down and selecting the most

relevant 6 Mile rap songs to present to the jury.<sup>3</sup> The 6 Mile rap songs are admissible, relevant evidence as they have significant probative value that goes directly to the elements at issue in the Indictment, and any prejudice does not substantially outweigh the probative value under Federal Rule of Evidence 403.

### **CONCLUSION**

For the above reasons, the government respectfully requests that the Court deny the defendants' Motion to Preclude the Government's Use of Rap Lyrics and Rap Videos at Trial (ECF 367).

Respectfully submitted,

MATTHEW SCHNEIDER  
UNITED STATES ATTORNEY

Dated: September 24, 2018

/s/Louis Crisostomo  
Louis Crisostomo  
Brant Cook  
Robert Moran  
Assistant United States Attorneys  
211 W. Fort Street, Suite 2001  
Detroit, MI 48226  
(313) 226-9100  
[Louis.Crisostomo@usdoj.gov](mailto:Louis.Crisostomo@usdoj.gov)  
IL 6288094

---

<sup>3</sup> Collectively, these nine rap songs are less than 40 minutes in length, and thus will take up very little actual time in the course of a trial that is expected to last several weeks.

**CERTIFICATE OF SERVICE**

I hereby certify that on September 24, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, for uploading and service by electronic notice to counsel and parties authorized to receive electronically Notices of Electronic Filing.

/s/Louis Crisostomo

LOUIS CRISOSTOMO

Assistant United States Attorney

211 W. Fort Street, Suite 2001

Detroit, MI 48226

(313) 226-9100

[Louis.Crisostomo@usdoj.gov](mailto:Louis.Crisostomo@usdoj.gov)

IL 6288094